

SPECIAL ISSUE

3167

Kenya Gazette Supplement No. 154

18th December, 2018

(Legislative Supplement No. 74)

LEGAL NOTICE NO. 238

THE HOUSING ACT

(Cap. 117)

IN EXERCISE of the powers conferred by section 24 of the Housing Act, as read with section 31A of the Employment Act, 2007, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Regulations—

THE HOUSING FUND REGULATIONS, 2018

1. These Regulations may be cited as the Housing Fund Regulations, 2018. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Housing Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to housing;

“contribution” means a contribution payable under these Regulations;

“contributor” means a person making a contribution under these Regulations;

“Corporation” means the National Housing Corporation established by section 3 of the Act;

“dependent” in relation to a deceased member of the Fund, means a relative of the deceased or a person who survives the deceased and who, on the date of the deceased’s death was—

(a) a spouse of the deceased;

(b) a child of the deceased; or

(c) a beneficiary nominated by the deceased.

“employee” has the meaning assigned to it under section 2 of the Employment Act; No. 11 of 2007.

“employer” has the meaning assigned to it under section 2 of the Employment Act;

“Housing Fund Account” means an account created for each member where mandatory and voluntary contributions accrue;

“member” means a person who is registered with the Housing Fund; and

“voluntary member” means a member who is self-employed, retired or not registered under an employer but makes monthly contributions in accordance with these Regulations.

3. (1) The Housing Fund established under section 6(1) of the Act shall be an affordable housing scheme for the purposes of section 30A of the Income Tax Act.

Affordable housing scheme.

Cap. 470.

(2) For the purposes of these Regulations, an “affordable housing scheme” means—

- (a) social housing designated for monthly income earners earning up to 19,999 shillings;
- (b) low cost housing designated for monthly income earners earning between 20,000 to 49,999 shillings;
- (c) mortgage gap housing designated for monthly income earners earning between 50,000 to 149,999 shillings; or
- (d) middle to high income housing designated for monthly income earners earning 150,000 shillings and above:

Provided that an individual's affordable housing scheme shall be based on the monthly income as at the date of application for a loan, housing or any other benefit or entitlement from the Housing Fund.

4. (1) Every employer who, under a contract of service, employs one employee or more shall register with the Housing Fund as a contributing employer and shall register his or her employee or employees as members of the Housing Fund.

Registration of employer and employee.

(2) Every employee who is under a contract of service shall register with the Housing Fund as a contributing employee, unless that employee is a foreigner working in Kenya.

(3) Without prejudice to the provisions of paragraph (1), a self-employed person who wishes to become a member of the Housing Fund may register as a voluntary member.

(4) Any person who is registrable as an employer under this regulation shall—

- (a) produce proof of registration with the affordable housing scheme; and
- (b) be a citizen of Kenya of at least 18 years of age.

(5) Any person who fails, neglects or refuses to register under this regulation commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

(6) Any employer who fails, neglects or refuses to make a contribution under this regulation commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

5. (1) An employer registered under these Regulations shall— The Register.
- (a) keep a proper and up-to-date register or record of the earnings and any other particulars of employees as may be specified by the Corporation;
 - (b) at all times produce the register or record on demand by a compliance or other officer of the Fund; and
 - (c) retain such register or record for such period as the Corporation may specify, but such period shall not exceed six years after termination.
- (2) A person who violates any of the provisions of paragraph (1) commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.
6. (1) Every voluntary member shall contribute to the Housing Fund— Voluntary contributions.
- (a) one hundred shillings per month that shall accrue to the Housing Fund; and
 - (b) a minimum of one hundred shillings per month that shall accrue to the member's Housing Fund Account.
- (2) The contributions made under paragraph (1) shall be paid into the Housing Fund as provided for under section 31A of the Employment Act and immediately credited to the member's individual account as the Housing Fund Account provided for under regulation 9.
7. (1) Contributions shall be paid directly to a designated Housing Fund Account as may be specified by the Corporation. Mode of payment.
- (2) The Housing Fund shall notify the member of the receipt of the contribution as soon as the contribution is received.
8. Every member of the Housing Fund may make additional contributions which shall be credited to member's individual account as the Housing Fund Account. Additional contributions.
9. (1) The Corporation shall cause to be established and maintained for each member of the Housing Fund, an individual account to be known as the member's Housing Fund Account to which shall be credited all contributions made to the Housing Fund by and in respect of each member of the Housing Fund. Creation of individual accounts for members of the Housing Fund.
- (2) The individual Housing Fund Account shall, in respect of each member of the Housing Fund, at any particular date, show a full break down of—
- (a) credit showing the member contributions;
 - (b) voluntary contributions;
 - (c) additional contributions;
 - (d) transfer payments into the account, if any;

- (e) transfer payments out of the account, if any; and
- (f) interest credited into the account, if any.

(3) Each member shall receive from the Housing Fund, at the end of every financial year, an annual benefit statement indicating the summary of the member's Housing Fund Account.

(4) Notwithstanding the provisions of paragraph (3), a member may, upon giving sufficient written notice to the Housing Fund, obtain a benefit statement.

(5) Where the Housing Fund has availed the information herein required online, a member may obtain the same online information and the Housing Fund shall ensure that the information online is up to date and sufficient for purposes of getting the information required under this regulation.

(6) Where the information required cannot be obtained or a member is incapacitated to access the information electronically, the Housing Fund shall give general notice to members informing them to access the information from the Housing Fund manually at specified offices situated in locations convenient to the members.

10. (1) The account of a member established under regulation 9, shall be deemed closed when—

Termination of a member's account.

- (a) all the moneys due from that account have been paid out of that account in accordance with these Regulations;
- (b) the member has ceased to be a member of the Housing Fund; and
- (c) no claim by or on behalf of that member to any benefit is pending determination.

11. (1) Where it is established by a member or officer of the Fund to the satisfaction of the Corporation that any amount has been paid to the Fund as a contribution when it was not payable under these Regulations and the amount was paid as a result of a *bona fide* error, the amount paid in error shall be refunded without interest thereon or may be applied, with the consent of the person who made the payment, to any current liability of that person to the Fund.

Incorrect contributions.

(2) Any amount which is payable as a contribution by an employer in respect of himself or herself or his or her employee that is in excess of the statutory contribution payable under the relevant law or these Regulations for any period, the amount in excess shall be refunded to the employer or employee, as the case may be, within three months and without interest thereon or may be applied, with the consent of the employer or employee, to any current liability or future obligation of the employer or employee to the Housing Fund.

(3) Where excess contributions are to be applied to any current or future obligations, they shall be applied immediately the consent of the employer or employee is obtained.

12. The Corporation shall set out the rate of return on contributions made by members.

Return on investment on savings by members.

13. The Corporation shall, on an annual basis specify the return applicable on members' contributions into the Housing Fund.

Return on contributions by members.

14. A person shall qualify for the affordable housing scheme if that person—

Eligibility criteria for affordable housing scheme.

- (a) is a Kenyan citizen of 18 years of age;
- (b) has proof of registration with the affordable housing scheme;
- (c) has proof of up to date remittance of the contribution; and
- (d) is a first time home owner under the affordable housing scheme.

15. (1) Subject to regulation 14, a member shall qualify for a loan for affordable housing if that member meets the criteria set out in these Regulations and guidelines by the Corporation.

Loan application procedure for direct lending by the Fund.

(2) A person who wishes to be granted a loan from the Housing Fund shall make an application to the Corporation in such a manner as may be specified by the Corporation.

(3) Despite the generality of paragraph (2), an application for a loan under these Regulations shall be accompanied by the following documents, where appropriate —

- (a) duly filled application Form by the applicant;
- (b) certified copies of pay-slips for the immediate last three months by the respective accounting officers or certified current bank statements for the last six months;
- (c) a certified copy of the National Identify Card or Passport; and
- (d) a non-refundable application fees of one thousand shillings or as determined from time to time by the Corporation.

16. (1) The Corporation shall use the following eligibility criteria when evaluating a loan application—

Eligibility criteria.

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 15(3);
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) no borrower shall be eligible for more than one loan at a time from the Housing Fund within a five year period; and
- (f) any other conditions as may be specified by the Corporation.

17. (1) A loan approved by the Corporation under these Regulations shall be released from the Housing Fund to the Individual Housing Fund Account.

Conditions for disbursement of Funds.

(2) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged house or any part of the house without the prior written consent of the Corporation;
- (b) meet costs for the insurance cover, if any, and pay such sum of money as may be determined by the Corporation from time to time;
- (c) maintain the house in a satisfactory state of repair.

(3) All legal documentation and disbursement of funds shall be with the Corporation.

18. A loan granted to a member under these Regulations shall carry an interest rate of up to seven per cent per annum on a reducing balance basis which shall be retained in the Housing Fund or such other rate as may from time to time be determined by the Corporation in a gazette notice.

Loan interest.

19. A person granted a loan under these Regulations shall be responsible for the charges and fees to be determined by the Corporation in relation—

Loan charges and fees.

- (a) to preservation of the value of the Housing Fund;
- (b) to management costs;
- (c) to insurance for both life and asset; and
- (d) to facility management costs.

20. (1) Every person entitled to become a member of the Housing Fund shall furnish to the Housing Fund, in the manner specified, particulars concerning himself or herself and his or her dependants who shall receive benefits upon his or her death.

Nomination of dependants to receive benefits.

(2) A member of the Housing Fund shall update his or her nomination under paragraph (1) at any time and, in any event, annually and the revised nomination shall be submitted to the Housing Fund.

(3) A member's nomination under this regulation shall be regarded by the Corporation to be his or her absolute intention and the Corporation shall not be responsible for any errors of omission or inclusion contained in the nomination.

(4) Where a person has been validly nominated under this regulation, the Corporation may decline to pay or vary the nominated beneficiary and shall furnish in writing its reasons thereof.

21. (1) A deceased member's contribution shall be paid to the dependants, if the member dies and was contributing to the Fund at the time of his or her death.

Survivors' benefit.

(2) The deceased member's contribution payable under paragraph (1) shall, in aggregate, be equal in value to the member's Housing Fund Account and interest accrued.

(3) The deceased member's contribution payable under paragraph (2) shall be held by the Corporation on trust, and paid to the nominated

beneficiary upon application by the beneficiaries in such proportions as stipulated by the member for the absolute use and benefit of the beneficiary.

(4) Despite the provisions of paragraph (3), the Corporation may exercise its option under regulation 20(4) with regard to any nomination under this regulation.

(6) Subject to any other written law, a benefit payable by the Fund upon the death of a member shall not form part of the assets in the estate of a member.

22. All receipts, earnings and accruals to the Housing Fund, and the balance of the Housing Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.

Retention of receipts and earnings.

23. The budget of the Housing Fund shall be approved by the Corporation.

Budget approval.

24. A person who misappropriates any funds or assets of the Housing Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

Offences and penalties.

25. In the event of winding up of the Housing Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the Ministry in charge of housing to facilitate appropriate refunds to the contributors.

Winding up.

Dated the 17th December, 2018.

JAMES MACHARIA,
*Cabinet Secretary for Transport, Infrastructure,
Housing, Urban Development and Public Works.*

